

2023:PHHC:084936

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Sr. No.201

**CRM-M-735-2009 (O&M)
Date of Decision: July, 06, 2023**

PARDEEP KUMAR AND ANOTHER ..PETITIONERS

VERSUS

STATE OF HARYANA AND ANOTHER ...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present: Mr. Anurag Arora, Advocate, for the petitioners.
Mr. Krishan K.Chahal, Addl. Advocate General, Haryana.
Mr. Raj Kumar Gupta, Advocate and
Mr. Vineet Aggarwal, Advocate, for respondent No.2.

RAJBIR SEHRAWAT, J. (ORAL)

CRM-1207-2009

Allowed as prayed for.

CRM-M-735-2009

The present petition has been filed for quashing of FIR No.261, dated 05.06.2006 (Annexure P-5) under Sections 420 & 120-B IPC registered at Police Station Safidon, District Jind and the supplementary report (Annexure P-8) filed under Section 173(8) of Cr.P.C. along with all consequential proceedings arising out of the above said FIR.

2. The allegation against the petitioners is that they purchased the property from the brother of respondent No.2, the author of the FIR. However, they purchased the property more than the share of their vendor. Accordingly, it has been alleged by the complainant that the petitioners and their vendor have colluded and committed a fraud and have grabbed the share of the complainant as well. Accordingly, FIR has been registered.

3. It is argued by learned counsel for the petitioners that the petitioners are the bonafide purchaser from the brother of respondent No.2. Therefore, they cannot be said to be colluding in the crime. It is further submitted by the learned counsel for the petitioners that regarding the said property, respondent No.2 had filed a civil suit. However, that civil suit was dismissed by the trial Court. Though in the appeal, the judgment and decree passed by the trial Court were reversed, however, the petitioners have filed RSA No.5524 of 2014 before this Court which is still pending. Hence, it is submitted that the FIR against the petitioners deserves to be quashed. Still further, it is submitted by learned counsel for the petitioners that the offence under Section 420 IPC is not even made out.

4. On the other hand, counsel for respondent No.2-complainant, as well as counsel for the State, has submitted that as per the allegations made in the FIR, the offence under Section 420 IPC is directly made out. Not only that, even during the investigation, the police have collected sufficient material to show the involvement of the petitioners in the crime. Qua the civil litigation, it is pointed out by the counsel for respondent No.2-complainant that although, the trial Court had dismissed the suit filed by the complainant, however, the said judgment and decree was reversed by the Lower Appellate Court in that case by recording a specific finding that there was no bonafides involved in the purchased of land by the petitioners from the brother of respondent No.2. Still further, although, the petitioners have filed regular second appeal before this Court, however, the judgment and decree passed by the Lower Appellate Court has not been stayed by this Court. It is further submitted that, otherwise also, judgment and decree passed in civil litigation filed by respondent No.2-complainant has nothing

to do with the criminal case. The issues in criminal case are altogether different than the issue involved in the civil suit.

5. Having heard learned counsel for the parties and having perused the case file, this Court finds that if the complaint/ FIR as such is read, the ingredients of the offence are, prima facie, disclosed. Not only that, even during the investigation, police have found sufficient material to implicate the petitioners and accordingly, the challan against the petitioners has already been filed. Therefore, it cannot be said that, prima facie, offence against the petitioners is not made out.

6. Learned counsel for the petitioners has taken the plea of being a bonafide purchaser, however, there is nothing on record to suggest that the purchase by the petitioners was bonafide one. It is not even in dispute that the property purchased by the petitioners is having revenue records, reflecting the shares of all the parties including the respondent No.2-complainant, as well as, his brother who sold the property to the petitioners. There is nothing on record to show that the petitioners had not purchased the property more than the share of their vendor. Rather, the record shows otherwise. Therefore, the plea of the petitioners being a bona fide purchaser cannot be countenanced, at this stage.

7. The petitioners have relied upon the civil litigation pending between the parties. However, even in the civil litigation, nothing has come in favour of the petitioners so far. Rather, the judgment passed by the Lower Appellate Court has gone against the petitioners, as such. Even there is no stay granted by the Court against operation of the said judgment qua the present petitioners. Though, there is an order of staying the operation of the judgment passed by the lower Appellate Court, but that is, in the appeal filed by other co-accused. However, the trial against that co-accused is

already continuing and has reached a final stage of adjudication. Therefore, that order is of no assistance for the case of the petitioners. Otherwise also, as per the provisions contained in Sections 40, 41 & 42 of Indian Evidence Act, 1872 (hereinafter referred to as the Act) in judgment passed in any other case is totally irrelevant except in a case where the said judgment bars the trial itself; is a fact in issue in a case or it relates to the aspects specified in Sections 41 & 42 of the Act. It is obvious that the said judgment is not the fact in issue in the present case. Otherwise also, the civil litigation, per se, does not bar the criminal litigation, as such. Both can go on simultaneously. In the criminal case, the prosecution is required to prove the case beyond reasonable doubt. That job is to be accomplished prosecution mandatorily, to get the petitioners convicted in the case. If the prosecution fails to prove the case beyond reasonable doubt, then the petitioners would be acquitted. Before that, everything is to be determined by the trial Court during the proceedings. All the arguments taken by the petitioners are in the nature of defence which they all free to take during trial.

8. In view of the above, finding no merit in the present petition, the same is dismissed.

July 06, 2023

Ankur

(RAJBIR SEHRAWAT)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	No